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IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH

IN THE MATTER OF

D.M., a minor

Case No. 1:19-cv-00040-CW

PETITION FOR:
1) APPROVAL OF A MINOR'S
SETTLEMENT, 2) APPOINTMENT
OF A CONSERVATOR, 3)
PERMISSION TO
ENDORSE SETTLEMENT CHECK,
AND 4) AUTHORITY TO
EXECUTE A RELEASE

Judge Clark Waddoups

Petitioner, Brenda Mayes, natural parent and legal guardian of D.M.,
represents to the Court as follows:

1. Parent. Petitioner is the biological parent and legal guardian of D.M.,
a minor. They reside in Davis County, Utah.

2. **Minor D.M. (DOB: XX/XX/2006).** D.M. is a minor child, 13 years of age, whose legal residence is with Petitioner. He was born in 2006 and will turn 18 years of age in 2024.

3. **Venue.** Pursuant to § 75-5-403, venue is proper in this Court because the minor is a resident of the State of Utah, Northern District, and the settlement proceeds will be deposited in a client trust account on his behalf in Davis County, State of Utah, Northern District.

4. **Settlement of Civil Rights Action.** On February 4, 2019, D.M. was exiting a school bus when the driver closed the bus doors on his backpack and proceeded to drive about 150 feet with D.M. suspended from his backpack outside the bus door. A settlement of the civil rights and Title VI claims against the bus driver and all other Defendants has now been reached in the amount of \$62,500, which includes \$21,250 for D.M. and \$41,250 for §1983 attorney fees and costs. This is a fair settlement. Petitioner acknowledges and agrees that the settlement amount is fair and reasonable and should be approved by this Court.

5. **Attorney Fees.** On behalf D.M., Petitioner retained Sykes McAllister Law Offices, P.L.L.C to represent D.M. for his claims against the above listed Defendants. The retainer provided for payment of a contingency fee of 40% on any settlement, or the hourly fees actually incurred, whichever is greater. In this case the hourly fees incurred were approximately \$47,097. Attorneys have agreed to reduce this amount to \$41,250, inclusive of all fees and costs.

6. **Costs.** Petitioner has also agreed to the pay costs of litigation. The outstanding costs owed in this case are less than \$1000, which amount is included in the total of \$41,250 paid to Attorneys. Petitioner will present an itemization of these costs at the hearing.

7. **Liens and Medical Bills.** There was no medical treatment obtained as a result of this incident, and thus there are no outstanding liens or medical bills.

8. **Consent.** Brenda Mayes, the minor's mother, has consented to act as Conservator of the estate of D.M. *See* Utah Code Ann. § 75-5-413.

9. **Legal Authority to Settle.** Pursuant to Utah Code Ann. § 78B-3-102, a parent or guardian "may bring an action for the injury of a minor child when the injury is caused by the wrongful act or neglect of another."

10. **Conservator.** Petitioner should be appointed Conservator of the estate of D.M. because the estate requires management and protection that cannot otherwise be provided.

11. **Release.** Based upon the settlement agreement, Petitioner should be allowed to execute a valid and enforceable mutual release of the minor child's claims.

12. **Waiver of Bond.** Given the facts specified herein and considering the amount that shall be recovered in settlement, Petitioner should not be burdened with the expense of furnishing a bond. *See* Utah Code Ann. § 75-5-411.

13. **Order.** Petitioner requests an Order from the Court approving payment of fees and costs in accordance with the retainer agreement. *See* Utah Code Ann. § 75-5-409.

WHEREFORE, Petitioner requests the Court enter an Order as follows:

1. Appointing Petitioner Brenda Mayes as Conservator of the estate of D.M., a minor child, to serve indefinitely and without bond;
2. Authorizing Conservator to approve the minor's settlement as fair and reasonable;
3. Authorizing Conservator to execute any General Release on behalf of D.M.;
4. Authorizing Conservator to endorse any settlement checks on behalf of D.M. and/or to execute a power of attorney on behalf of D.M.'s Attorneys to endorse any settlement checks and deposit them in the D.M. Settlement Trust Account, also known as the Sykes McAllister Trust Account;
5. Authorizing payment of \$41,250 for attorney fees and costs, to be paid to Attorneys Sykes McAllister Law Offices, P.L.L.C, as described above;
6. Approving the remaining \$21,250 to be placed in a trust account for the minor child, D.M.;
8. Approving release of up to \$500 per school year, without further court order, for D.M. to attend one or more camps directed toward African American youth and/or other activities where he can feel safe and included.

9. Approving release of up to \$1000 upon entry of high school, without further court order, for purchase of a laptop to be used for school related purposes.

10. Approving release of up to \$5000 upon D.M.'s sixteenth birthday for purchase of a car, without further court order, which can be used for transportation to and from school and school related activities.

11. Approving release of all remaining funds to D.M., without any further court order, upon his 18th birthday;

12. For such other and further Order as the Court deems just and proper.

DATED this 16th day of July, 2019.

SYKES MCALLISTER LAW OFFICES, PLLC

/s/ Alyson C. McAllister

Alyson C. McAllister

Attorney for Petitioner

I, Brenda Mayes, hereby consent to act as Conservator of D.M. estate, and declare under penalty of perjury that the foregoing is true and correct.

/s/ Brenda Mayes (with permission)

Brenda Mayes, *Petitioner*